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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/828,906

04/21/2004

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J6886(C)

5655

201 7590 03/01/2010
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EXAMINER

FISHER, ABIGAIL L

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

03/01/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOANNA H. ZHANG AND MICHAEL C. CHENEY

Appeal 2009-005746
Application No. 10/828,906
Technology Center 1600

Oral Hearing Held: January 14, 2010

Before TONI R. SCHEINER, DEMETRA J. MILLS, and
FRANCISCO C. PRATS, *Administrative Patent Judges*.

ON BEHALF OF THE APPELLANTS:

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Appeal 2009-005746
Application 10/828,906

1 *The above-entitled matter came on for hearing on Thursday,*
2 *January 14, 2010, commencing at 9:04 a.m., at the U.S. Patent and*
3 *Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Kevin E.*
4 *Carr, Notary Public.*

5 JUDGE SCHEINER: Good morning.

6 THE USHER: Good morning.

7 Calendar number 45, Appeal number 2009-005746.

8 Mr. Honig.

9 JUDGE SCHEINER: Thank you.

10 DR. HONIG: Thank you.

11 JUDGE SCHEINER: Good morning. Whenever you're ready,
12 you can start and you'll have twenty minutes.

13 DR. HONIG: Yes.

14 JUDGE SCHEINER: I'm just going to move these so I can see
15 you. I can't see over these screens.

16 DR. HONIG: I would have wished I could have grown a little
17 bit, but you're going to --

18 JUDGE SCHEINER: No, it's me.

19 DR. HONIG: -- have to put up with the size you have here.

20 JUDGE SCHEINER: No, it's me. I can't see the podium
21 without moving the screens.

22 DR. HONIG: Okay. So my name is Milton Honig. I'm an in
23 house patent attorney for -- with Unilever. Our company markets personal
24 care products, and these are the subject of the claims. Personal care products

1 are things like shampoos, lotions and creams, deodorants, toilet bars. We
2 sell these under such names as Dove, Vaseline, Suave, Axe, Ponds. Often
3 we do have some sort of unsaturated compound, for instance for fragrance in
4 the products that we sell. Less so, we have compounds that have more than
5 one double bond that are polyolefinic. And even less so, we have what is
6 known as two olefins in a conjugated relationship, one with another. I'll just
7 call that a conjugated double bond.

8 I'm sure you're familiar with what they are, but just for the
9 record, so my left hand is a double bond and my right is a double bond, and
10 in between there are -- there is a single bond, so that's the relationship. If
11 you have more single bonds in between, they're not conjugated. Our
12 recognized problem of conjugated double bonds is that they're not that
13 stable. They degrade. And when they degrade, they tend to form color
14 bodies. And when you're expecting a white soap and it looks a little off
15 color, that's a problem for the manufacturer.

16 We -- the Appellants did a number of investigations to try to
17 minimize these degradation de-coloration issues. One of the things that we
18 found was that certain types of substituted ureas are pretty good at
19 stabilizing the conjugated bonds. And the claim 1 specifically covers some
20 sort of material which has at least two olefinic bonds in a conjugated
21 relationship. It has a formula 1, which is a set of substituted ureas and in
22 claim 2, our preferred one is a hydroxyethyl urea.

23 There are two rejections in this case, both for obviousness. In
24 the first rejection, all the claims are rejected except for claim 12 over a

1 reference to Rodrigues. Now the two Rodrigueses in this application
2 being -- references being applied against the claims, the first rejection is the
3 Rodrigues 122. In this reference is disclosed fabric treatment compositions.
4 And they found -- Rodrigues has found that you can use these substituted
5 ureas to prevent wrinkling of the fabric, impart crease resistance, give it a
6 good hand, even improve moisture absorption. So that's what these ureas are
7 known for in the textile fabric. And of course like all products you have to
8 add adjuvants. And one of the most ubiquitous is a fragrance, and so that's
9 what that reference says.

10 Nakatsu is the secondary reference. Nakatsu is cited for
11 perfume compositions. And Nakatsu finds that the perfume compositions
12 that they have are antimicrobial, besides having a good smell. In Nakatsu
13 there is a column 3 around line 25 which sets -- and bridging to about
14 column 4, line 4, which sets forth the approximately 60 materials. And in
15 the first paragraph of that segment there are very specific compounds.
16 Actually, 24 very specific non-aromatic compounds are recited. And among
17 this list the Examiner has identified two materials, terpinene and
18 phellendrene as the materials that have conjugated non saturation. The
19 terpinene comes actually in three isomers in commerce, the alpha, the beta
20 and the gamma. And it's only the alpha isomer that is conjugated, not the
21 beta or the gamma, and the reference says nothing about whether the
22 terpinene is alpha, beta or gamma isomer.

23 Now appellant agrees that the phellendrene is actually a
24 conjugated double bonded structure. However, nothing is said by Nakatsu

1 with respect to why one should specifically among all those 24 materials, in
2 fact among all the possible materials, select phellendrene in a formula.
3 There are also five tables where Nakatsu sets forth perfume compositions.
4 In the third of the table -- the third table, the material labeled AMPAT-C,
5 one of the ingredients is phellendrene, and that's at a very low percentage.
6 In fact, of the 20 ingredients, phellendrene -- 14 of them are in
7 concentrations much higher than the phellendrene. And in fact, there is no
8 reason in this reference given why one would select a composition
9 specifically with phellendrene or specifically with any type of conjugated
10 double bond perfume ingredient.

11 So basically the -- what Appellants are saying is that only
12 through the hindsight of the Applicants identifying that there is a problem
13 that can -- with conjugated double bonds that be solved by these ureas is the
14 Examiner finding some references that says, "Oh, here's a urea. And here,
15 somewhere buried is a conjugated double bond." These two materials in the
16 references don't really interact with one another. There's no reason for
17 putting, no motivation for putting these two materials together.

18 In fact, the problem's solution that we have in front of us, that
19 Appellants had, to solve stabilizing conjugated double bond materials in
20 personal care formulas, there is no indication that this could be
21 accomplished by a substituted urea. In fact, I think that the normal chemist
22 in trying to deal with a problem, knowing the problem, and they do know
23 this problem of conjugated materials giving rise to color bodies, they would

1 try to avoid putting such materials in perfumes in the first place. So there
2 should be a motivation against even combining these.

3 I'm glad to -- oh, there is one other thing. The Examiner has
4 alluded to three -- in the Answer, to three other materials, citral, which is not
5 a conjugated double bond material, suzalar and thymol, and those two
6 materials are aromatics. They are not olefinic, and certainly not conjugated.

7 I'm -- have a couple more minutes. I'll be glad to answer any
8 questions you might have.

9 JUDGE SCHEINER: I don't think --

10 JUDGE PRATS: Yeah, a question. This case seems to come
11 down to -- you're sort of arguing, sort of, the Baird situation. Why would
12 you select from a long list? But this list doesn't seem that long. Or is this a
13 Baird situation?

14 DR. HONIG: Well, I think the Examiner puts the problem and
15 solution in the wrong situation, okay? What I'm saying is that yeah, it's
16 unlikely. It's unlikely that you would put those two materials together.
17 There is no indication of why. Yes, it's a fragrance, but there are thousands
18 of fragrances. Why would you put those together, other than the pencil and
19 the eraser situation? It's no -- they don't interact with one another. Also, and
20 I think this is important. I reiterate again that if you're a chemist and you're
21 trying to formulate a pretty stable product, you don't want to put a really
22 unstable material in there. So if you're going to formulate a fragrance, you're
23 going to formulate that -- try to avoid notes that are conjugated double bond
24 materials that could cause trouble. There's no reason why you have to have

1 a conjugated double bond material in a fragrance. Most of them don't have
2 it. The only reason that this one formula has it in here is because the
3 Examiner saw what the Inventor had, and then reasoned backward.

4 JUDGE MILLS: Is there any recognition in Rodrigues that the
5 substituted urea is somehow stabilizing the bonds to prevent the wrinkles in
6 the fabrics? Do we have any discussion --

7 DR. HONIG: Well, it -- I don't believe there is any discussion
8 of the mechanism on how they do that. I used to be in some textile
9 chemistry and they call these aminoplasts. Ureas have nitrogen and that's
10 what they will do. They will somehow cross link with the textile fabrics and
11 give them a better hand, give them that crease resistance, nothing about
12 stabilization. There's nothing about mechanism that I recall from those
13 references.

14 JUDGE MILLS: Okay.

15 JUDGE SCHEINER: What's the purpose of the conjugated
16 double bond in your formulations?

17 DR. HONIG: Well, upon occasion if you do want to use a
18 conjugated --

19 JUDGE SCHEINER: It is --

20 DR. HONIG: -- double bond in a fragrance --

21 JUDGE SCHEINER: It is already --

22 DR. HONIG: -- here is a way. Here is a way to use it.

23 JUDGE SCHEINER: It is a -- okay. Okay.

1 DR. HONIG: But we have other compounds that happen to be
2 conjugated. For instance, we sell products that have conjugated linoleic
3 acid. There's a small amount of that material in there. And in fact in the
4 Application here we have some -- a couple of experiments demonstrating
5 how that can go badly.

6 JUDGE SCHEINER: Okay.

7 JUDGE PRATS: Yeah, that's correct. The Examiner doesn't
8 really address any of the -- that is, the claim -- broadest claims encompass
9 conjugated linoleic acid, but the Examiner really doesn't supply art that goes
10 against those, only --

11 DR. HONIG: There was no art supplied against that.

12 JUDGE PRATS: Right.

13 DR. HONIG: But I think the broader claim should be
14 allowable. I don't think the Examiner has shown the motivation.

15 JUDGE SCHEINER: I don't have anything further. Did you
16 have anything?

17 JUDGE MILLS: No, I don't. Thank you very much.

18 JUDGE SCHEINER: Yeah. I think we understand the issue.
19 Thank you.

20 DR. HONIG: Thank you.

21 JUDGE MILLS: Thank you.

22 Whereupon, at 9:16 a.m., the proceedings were concluded.

23 * * * * *

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